

2013 CITY OF SAN JOSE – CEO NEGOTIATIONS**CITY PROPOSAL #18 – SICK LEAVE PAYOUT**

City Proposed Language:

- 18.2 Any employee hired on or after January 1, 2012, shall not be eligible for sick leave payout.
- 18.3 Upon a release of claims being signed by the retiree, retroactive payments shall be made to eligible employees in the Federated City Retirement System, who retired on or after January 1, 2012, and before the date that this proposal is ratified and approved by the City Council, who were eligible for a sick leave payout at the time of their retirement under the requirements contained herein and did not receive the payout because the payouts were eliminated prior to their retirement. Retirees will be eligible for a payout of the amount of unused sick leave hours accrued as of December 31, 2011, or the date of their retirement, whichever is less. Payouts will be based on the provisions contained in Sections 18.5 and 18.6 below. This will resolve any claims related to sick leave payout upon retirement, including but not limited to:-
- 18.3.1 Unfair Practice Charge No. SF-CE-945-M: The parties agree that the foregoing resolves the issues underlying unfair practice charge no. SF-CE-945-M filed by the Union with the Public Employment Relations Board on or about March 15, 2012; therefore, the Union agrees to withdraw the charge no later than fifteen (15) calendar days after the execution of this agreement.
- 18.3.2 Case No. 1-12-CV-224197 and Case No. 1-12-CV-237150: The parties also agree that the foregoing resolves the issues underlying Case No. 1-12-CV-224197 and Case No. 1-12-CV-237150 filed by the Union with the Santa Clara County Superior Court of the State of California; therefore, the Union agrees to withdraw with prejudice Case No. 1-12-CV-224197 and Case No. 1-12-CV-237150 no later than fifteen (15) calendar days after the execution of this agreement.
- 18.4 For employees hired on or before December 31, 2011, a sick leave payout shall be made to full-time and part-time benefitted employees who are members of the Federated City Retirement System at the time of retirement or death under one of the following scenarios:
- 18.4.1 Federated Retirement Plan. The employee is: a) a member of the Federated Retirement Plan, and; b) retired under the provisions cited in the plan, and; c) credited with at least 15 years of service in this retirement plan, or; d) credited with at least 10 years of service prior to a disability retirement.
- 18.4.2 Separated Employee with Vesting Rights. The employee has: a) separated from service with the City and has not been terminated for cause as defined by San Jose Municipal Code Section 3.04.1370 and; b) retained vesting rights in a retirement system according to provisions in the SJMC, and; c) following such separation, qualifies for retirement and retires under the provisions cited in the code, and; d) has at the time of

retirement credit for at least 15 years of service in the applicable retirement plan.

18.4.3 Death During Service. The estate of any full-time employee who dies while in City service and prior to retirement, even though the employee is not credited with at least 15 years of service in any applicable retirement plan.

18.4.4 Death of Separated Employee. The estate of any full-time employee who: a) has separated from service with the City and has not been terminated for cause as defined by San Jose Municipal Code Section 3.04.1370 but had retained vesting rights in a retirement system according to provisions in the SJMC, and; b) dies prior to becoming eligible for retirement allowances as cited under provisions of the SJMC, and; c) has at the time of death credit for at least 15 years of service in the applicable retirement plan.

18.5 Effective December 31, 2011, for purposes of calculating a sick leave payout, employees' sick leave balances and hourly rates shall be frozen. This means that an employee will receive no more for a sick leave payout, after having met the requirements set forth above, than he or she would have been entitled to on December 31, 2011. Sick leave usage after December 31, 2011, will come from the sick leave balance available for payout purposes (the "sick leave payout balance"), until that balance is exhausted. An employee will continue to accrue sick leave after December 31, 2011, but it may not be used for sick leave payout purposes.

For example, if an employee's hourly rate is \$40 and his or her sick leave balance is 1000 hours on December 31, 2011, then if he or she meets the eligibility requirements contained herein, the payout of a sick leave balance at the time of retirement will be based on the formula below, and shall be based on no more than 1000 hours and an hourly rate of no more than \$40. This will occur even if the employee has subsequently earned more than 1000 hours in sick leave or received a pay increase to an hourly rate higher than \$40. In this example, if the employee uses 200 hours of sick leave after December 31, 2011, thereby reducing his or her sick leave payout balance to 800 hours, the employee will only be entitled to sick leave payout of 800 hours at \$40 per hour, regardless of any sick leave accrued after December 31, 2011.

18.6 Payout shall be determined as follows.

18.6.1 Payout shall be determined as follows: If a full-time or eligible part-time employee at the time of retirement or death has earned unused sick leave hours, the employee or Estate shall be paid the equivalent of a specified percent of their hourly rate of pay as of December 31, 2011, multiplied by the total number of accumulated and unused hours of sick leave as of the date of retirement or death as follows:

<u>18.6.2</u>	<u>Less than 400 hours -</u>	<u>Hours accumulated x 50% of final hourly rate;</u>
	<u>or 400 - 799 hours -</u>	<u>Hours accumulated x 60% of final hourly rate;</u>
	<u>or 800 - 1200 hours -</u>	<u>Hours accumulated x 75% of final hourly rate.</u>

- 18.7 Use of previously accumulated sick leave hours. For purposes of determining the total number of accumulated and unused hours of sick leave of a full-time employee at the time of retirement or death, unused sick leave from prior periods of employment with the City shall be used. However, previously accumulated sick leave shall be credited to the employee for use during an employee's current employment period.

